Calendar No. 442

99TH CONGRESS *1st Session* | SENATE | REPORT 99-204

PROMOTING EXPANSION OF INTERNATIONAL TRADE IN TELECOMMUNICATIONS EQUIPMENT AND SERVICES, AND FOR OTHER PURPOSES

NOVEMBER 26, 1985.—Ordered to be printed

Filed under authority of the order of the Senate of November 23 (legislative day, November 18), 1985

Mr. PACKWOOD, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 942]

The Committee on Finance, to which was referred the bill (S. 942) to promote expansion of international trade in telecommunications equipment and services, and for other purposes, having considered the same, reports favorably thereon with an amendment, and recommends that the bill, as amended, do pass.

I. SUMMARY

The premise of the Committee bill is that telecommunications deregulation and the court-ordered divestiture (break-up) of AT&T represent a unilateral elimination of a major non-tariff barrier to imports of telecommunications equipment. As the world's largest telecommunications market, the United States is well placed to take the lead in achieving more open world trade in telecommunications. Systematic use of access to the United States market as negotiating leverage and strict enforcement of existing trade agreements are to be used as a means of opening the world market and improving access to foreign markets for American telecommunications exports. Such access is believed essential if United States producers to telecommunications equipment and services are going to compete successfully with foreign producers, many of whom receive protection and support from their governments.

71-010 O

S363-8.

The bill's objectives include negotiation of agreements to obtain opportunities in foreign markets that are substantially equivalent to opportunities available in the United States market for telecommunications products and services. For the purpose, the President is given a three year authority to negotiate bilateral or multilateral agreements to open trade in telecommunications, and may, for this purpose, eliminate or modify United States tariff and non-tariff barriers.

The Committee approved the following substantive amendments to S. 942:

1. An amendment to shorten from two years to eighteen months the time frame for negotiation agreements with other countries to remove barriers to United States telecommunications exports.

2. An amendment to shorten from six months to four months the period for the study to be done by the United States Trade Representative of foreign barriers to telecommunication exports. This amendment also shortens from 30 to 15 days the period following the study for Presidential action retaliating against a foreign country found to be in violation of an agreement which provides for access to its markets in telecommunications. As a result of this amendment the President would be required to retaliate 15 days after the end of the four month period against a country which maintains barriers to United State telecommunications exports in spite of an agreement providing for access to that market.

3. An amendment to require that Presidential actions taken to offset foreign barriers to United States telecommunications exports following the 18 month negotiation period shall be submitted to Congress under the fast-track provisions of Section 102 of the Trade Act of 1974.

4. An amendment to give the President authority to compensate a foreign country which has been the target of retaliation by the United States Trade Representative for failure to carry out the terms of a telecommunications agreement, if that retaliation is later found, in an international forum, to violate international obligations of United States.

5. An amendment to the negotiating objectives of the bill to seek the inclusion of telecommunications within the coverage of the Government Procurement Code negotiated under the General Agreement of Tariffs and Trade.

II. General Explanation

The breakup of the Bell System is the most recent in a series of judicial and regulatory actions which have progressively opened up the United States telecommunications market to domestic and foreign suppliers. A series of FCC actions in the 1960s and 1970s allowed non-Bell equipment to be connected to the public switched telephone network (PSTN). As a result, imports of products, such as telephones, modems, telephone answering machines, and PBX's have increased substantially. At the same time, increased United States exports of telecommunications equipment have fallen far short of the growth in United States imports and continue to represent a very low share of total world consumption. In significant part, this reflects the fact that most foreign markets which have

their own indigenous equipment suppliers are closed to United States telecommunications products. United States exports have increased primarily to developing countries and the Middle East. As a result of these trends, the United States balance of trade in telecommunications equipment turned negative for the first time in 1983.

According to a United States International Trade Commission report prepared for the Committee on Finance (Investigation #332-172) imports of customer premises equipment, a product market which was significantly opened by FCC regulatory actions, grew by 640 percent between 1978 and 1983. By contrast United States exports grew by only 57 percent during the same period. In other product categories, imports of cable, wire and lightguide products increased by nearly 600 percent between 1978 and 1983, while United States exports showed virtually no growth. In transmission equipment, imports grew more than three and one-half times faster than United States exports. Only in switching equipment did the United States export growth rate marginally excede that of United States imports.

These trends were evident before the divestiture of AT&T and it is expected that the divestiture will only accelerate these trends—particularly with respect to switching and transmission equipment. Recent reports indicating that former Bell companies have turned to foreign sources on a widespread scale suggest that not only may the Bell operating companies' market no longer be dominated by Western Electric, but that enhanced sales opportunities for existing and potential domestic equipment producers may never be realized due to foreign competition.

The United States represents the world's largest market for telecommunications equipment. The other major markets which have a domestic telecommunications industry of their own include various member states of the European Community, Japan, and Canada. Virtually all foreign telephone administrations have restrictive purchasing policies in place which favor domestic suppliers. Most of the trade which presently exists involves the sale of equipment to the private sector. Of the $1.3 billion dollars in United States telecommunications equipment exported in 1983, less than $.5 billion went to the eight developed countries representing a $21.5 billion market.

The current world market in telecommunications products is over $50 billion and is expected to reach $90 billion by 1990. Many foreign firms challenging United States manufacturers for this market enjoy protected home markets through government-run postal telephone and telegraph agencies (PTT) or similar monopolies that control the purchase of equipment through certification procedures, licenses, standards and other requirements that often constitute insurmountable barriers.

Even though the United States accounted for nearly half the world's production, the United States share of global exports is only about 13 percent. Japan exports 20 percent of the total, while West Germany at 17 percent and Sweden at 16 percent control larger shares of the world export market than does the United States. Exports as a percentage of total production indicate even greater disparities. Sweden exports 65 percent of its total produc-

tion, Netherlands 38 percent, Japan 16 percent, and Canada 15 percent. The United States exports merely 7 percent of its production.

The following is a brief discussion of key foreign telecommunications markets.

Japan.—The Japanese telecommunications market is the second largest single telecommunications market in the world, after that of the United States Japan accounts for 38 percent of United States telecommunications imports. The principal mechanism to encourage Japan's technological development in telecommunications has been the national service monopoly, Nippon Telegraph and Telephone Corporation (NTT). Japanese equipment suppliers—known in the industry as the NTT family of corporations—engaged in controlled competition to provide NTT its equipment needs. Helped by their insulation from foreign competition, the Japanese telecommunications industry has become a world class competitor. While still influential in setting standards and specifications, as well as being a source of technology, NTT now accounts for less than half of telecommunications purchases. In addition, a 1980 agreement between the United States and Japan to open NTT's procurement process has yielded some results, but NTT's purchases of foreign equipment continue to account for a miniscule portion of its total procurement. By 1983, NTT had increased its contracts with United States suppliers to $140 million from $40 million in 1982. However, only $30 million of the $140 million in 1984 contracts to NTT can be considered typical telecommunications equipment that involved repeat business. NTT has been slow to sign contracts involving equipment that would become part of a functional Japanese telecommunications network. In addition, NTT represents a progressively smaller segment of the overall telecommunications market in Japan—only 35 to 40 percent. As such, NTT's relative importance as the "window" to the overall Japanese market is significant but diminishing.

It is still too early to determine what effect the ongoing process of NTT privatization will have on encouraging an open market for at present, NTT remains under government ownership. As can be seen in the recent example involving telecommunications satellites and standards for mobile telephone equipment, normal market forces in Japan still seem to be subordinated to other national objectives.

Europe.—Collectively, Western Europe represents the second largest potential telecommunications market with about 37 percent of the world's equipment market. However, telecommunications policies for the 10 member collective must be viewed as distinct from individual national policies. Although the European Commission has attempted to stimulate a community-wide market for telecommunications, most European telecommunications markets remain dominated by government postal and telecommunications organizations which have monopoly control of telecommunications equipment and services. Largely due to the entrenched nationalistic attitude toward competition, United States companies face limited access to many countries. Moreover, there is widespread concern among United States producers that European Commission efforts to harmonize member state standards could well lead to the

exclusion of foreign producers from the European Economic Community market.

In France, CIT-Alcatel/Thompson provide all of the central exchange equipment and 70 percent of transmission equipment for the French PTT. Overall, French companies supply 70 percent of the French interconnect market, in addition to their share of the French PTT which is nearly 100 percent. Little doubt exists that market access to the French telecommunications market is nearly nonexistent and presents a impenetrable barrier to United States suppliers which is greater than any country including Japan.

Although the interconnect market in West Germany is somewhat more open, the Bundespost maintains a highly restrictive system in terms of procurement and provision of services—where Siemens dominates as the single largest beneficiary. In fact, The Bundespost has been working with France to the detriment of other competitors. This is evidenced by the Bundespost efforts with the French to establish an Franco-German set of standards for the cellular radio system that would effectively limit those two markets to French and West German national firms.

The United Kingdom continues to move toward liberalization of its telecommunications market. In July 1979, the traditional United Kingdom monopoly structure changed, permitting a separate corporation called British Telecom (BT) to concentrate on telecommunications and leaving the British Post Office to handle mail and the banking services. By passing the British Telecom Act of 1981, the UK government also opened the way for further competition in telecommunications services. For example, under this law, private firms may be licensed to provide services using BT's network and private firms will be permitted to sell telephone equipment directly to customers.

Canada.—Canada is one of the few countries that allows even a limited amount of competition in its domestic market. Unlike other countries where state monopolies dominate domestic markets, the Canadian telecommunications market is made up of systems which differ by province consisting of private, governmental and joint private-governmental operations. Like the United States in its predivestiture period, Canadian telephone services are vertically integrated with Canadian equipment manufacturers companies linked to telephone operating companies. While the Canadian market is more open than those of most other developed countries, discriminatory procurement by vertically integrated companies, along with 17½ percent tariffs on most telephone equipment imports, result in effective trade barriers to United States firms.

Newly Industrialized Countries (NICs).—A major portion of the growth in the United States telecommunications trade deficit is attributable to rapidly growing imports from several newly industrilized countries, especially Taiwan, Korea and Hong Kong. Besides, Brazil and its restrictive informatics policy, these countries do not yet appear to pose major market access problems for United States industry. Most NIC countries have limited manufacturing capabilities beyond low-cost standardized equipment—for example, cheap hand-held telephone sets which make up most of our deficit with Hong Kong, Korea and Taiwan. As a result, at present they purchase most of their systems from foreign suppliers. Because most of

these purchases take on a major projects emphasis, one of the largest issues for success in competing with Japanese and European competitors in these NIC markets is export financing-either subsidized or at below-market rates. However, to the extent that these and other countries' markets for and production of telecommunications equipment expand, United States producers need the assurance that they will not emulate the restrictive policies that characterize most developed countries.

III. The Committee Bill

The Committee bill grants the President three year authority to enter into multilateral or bilateral trade agreements which provide open trade in telecommunications with countries which have major markets or potential markets for telecommunications. Any agreements entered into would be approved by Congress and may be treated as a trade agreement under the fast-track legislative procedures set out in sections 102 and 151 of the Trade Act of 1974.

Imbalances in competitive opportunities in telecommunications trade which still exist at the end of eighteen months following the bill's enactment are to be corrected by restricting imports of products and services of countries which have failed to enter into trade agreements to correct those imbalances. Remedies available to the President include duty increases, restrictions on registration or approval of equipment, restrictive government procurement practices and other measures. The President is given authority to compensate countries whose exports are affected.

Within 135 days of enactment, the bill requires that the United States Trade Representative retaliate against countries which have failed to comply with existing commitments to open their telecommunications markets. The purpose of retaliation is to restore the balance of competitive opportunities by raising duties and restricting registration or approval of telecommunications products imported from those countries. The President is given authority to compensate countries whose exports are unintentionally affected or in the event that such retaliation is found subsequently to be inconsistent with the international obligations of the United States.

Negotiations and retaliation are to be based on a four month investigation by the United States Trade Representative of foreign barriers to United States telecommunications exports, with a principal objective of achieving access opportunities in foreign markets for sales of telecommunications equipment and services by United States firms substantially equivalent to the opportunities available to foreign firms in the United States market.

A. FINDING AND PURPOSES

The Committee bill cites the fact that the world market for telecommunications will be a source of rapid growth in the coming decade. The growing imbalance of trade opportunities resulting from deregulation and divestiture in the United States market and the continuation of unfair and discriminatory practices in foreign telecommunications markets threatens the loss of jobs in the United States telecommunications industry and its ability to compete. Accordingly, the bill finds that the United States should avoid

granting continued open access for foreign telecommunications producers in its market unless the imbalance is corrected through the achievement of substantially equivalent competitive opportunities (SECO) abroad for United States telecommunications products and services. The purposes of the bill include the fostering of economic and technological growth of and employment in the United States' telecommunications industry and the achievement of a more open world trading system in telecommunications through the negotiation and achievement of substantial equivalent opportunities for United States telecommunications exporters.

The principle of substantially equivalent competitive opportunities has been included in this bill as a fundamental negotiating objective for United States trade policy in telecommunications. The concept behind this principle is the achievement of an increased level of access that allows the United States industry to compete effectively in the world market. This does not mean the achievement of a strict mirror image of all the conditions of competition of the United States market in the markets of particular foreign countries. Rather, it assumes that specific negotiating objectives for each country would be established to reflect the existing market structure in that country—with a view to achieving overall competitive opportunities comparable to those in the United States market. For example, while the legislation does not assume foreign countries will eliminate vertical integration in their telecommunications markets, it does anticipate that comparable openness can be achieved through more open procurement processes, elimination of restrictive standards, and other specific negotiating objectives acted in the bill.

References in the legislation to the imbalance in trade opportunities accruing from the liberalization and restructuring of the United States telecommunications market reflect the Committee's deep concern about the unanticipated trade effects of telecommunications deregulation and divestiture in this country. While the purpose of this legislation is not to "reregulate" the United States telecommunications market, it is intended to harness the trade effects of deregulation and divestiture in this sector—namely, the unilateral opening of major segments of the market to imports—as leverage to achieve a more open world trading system in telecommunications.

The Committee believes that the trade situation characterizing the United States telecommunications market is almost unique and therefore requires the kind of special and timely treatment provided for in this legislation. While the Committee is not asserting that the GATT necessarily requires compensation by trading partners for uncompensated reductions in barriers by any given country, correction of the imbalance in market opportunities (relative to other countries) created by such action is a legitimate trade policy objective.

In the case of telecommunications trade, improved access to the United States market accruing from deregulation and divestiture must be included in any estimate of the openness of the United States market and in any assessment of whether the United States negotiating objective of "SECO" has been achieved. Similarly, any United States action to achieve such objectives—whether in the

form of United States concessions or in terms of unilateral action to restore the balance of opportunities—must take into account previous unilateral actions that have had the effect of opening the United States market to our trading partners. Finally, as regards potential compensation for unilateral action to offset foreign barriers to United States telecommunications exports—particularly in the context of GATT Article XXVIII negotiations—United States negotiators should ensure that appropriate credit is given for unilateral reductions in United States barriers that have never been "paid" for by our trading partners—in particular, those related to divestiture that have occurred since the last major multilateral trading rounds.

B. INVESTIGATION BY THE UNITED STATES TRADE REPRESENTATIVE OF FOREIGN BARRIERS

Section 101(a) of the bill requires that the United States Trade Representative, in consultation with other members of the Trade Policy Committee, complete an investigation within four months of the date of enactment to identify and analyze (1) all acts, policies, and practices, in foreign telecommunications markets that deny to the telecommunications products and services of United States firms competitive opportunities that are substantially equivalent to those available to such products and services in the United States, and (2) which of such acts, policies or practices denies or impairs benefits to which the United States is entitled under existing agreements. The purpose of distinguishing between foreign telecommunications barriers in general and those which specifically deny the United States benefits to which it is entitled is to identify those barriers which must be removed through negotiation and compensation and those against which the United States has a right to retaliate.

In conducting his investigation, the United States Trade Representative is directed, under Section 103(b), to take account of the actual or potential economic benefits accruing to foreign firms from improved access to the United States market accruing for deregulation and divestiture in the telecommunications market and the actual patterns of trade, including United States telecommunications exports to foreign countries in relation to the international competitiveness and export potential of such products and services. In making this analysis with respect to countries that have made commitments or concessions to the United States involving trade in telecommunications, foreign barriers are presumed to exist if the actual patterns of trade, do not reflect the patterns which could be reasonably anticipated to flow from such concessions or commitments. The Committee intends to ensure that the removal of formal barriers does not permit the classification of that market as open unless the patterns of trade which would reasonably be expected to emerge from the removal of such formal barriers does, in fact, materialize. "Invisible" or "informal" barriers have become a major obstacle in gaining access to the Japanese and other markets, and this provision is intended to focus the analysis on the results, rather than nominal openness, associated with access to foreign markets.

The requirement that actual patterns of trade be taken into account in determining market openness is designed to go beyond traditional means of analysis that focus primarily on nominal or formal barriers to access. By bringing empirical data and evidence to bear in the determination, the Committee expects the United States Trade Representative to find evidence of trade distorting practices that are of a more informal or less visible nature. Evidence of such practices might take the form of comparisons between the world market share of a given United States export and a substantially smaller market share in the country in question or between sales of a product in one country that are disproportionately smaller than its sales in a country with a similar market. The Committee expects actual sales to be factored into any such determination and would anticipate that agreements reached pursuant to this Act would include monitoring provisions to see that measurable results are indeed achieved.

Where a country is party to a trade agreement that provides access to only a portion of its telecommunications market, the legislation would provide for treatment of that country under both 101(a)(1) and (2) and related negotiation and retaliation tracks. If that country is found to maintain policies that deny "SECO" but do not violate existing agreements, it would be treated solely under the negotiation track. If the country were found in violation of its agreement—therefore subject to retaliation—acts, policies and practices identified in the investigation which deny "SECO" would still be the subject of a negotiated agreement.

The Committee deleted explicit references to sales by subsidiaries as a measure of the openness of either the United States or foreign telecommunications markets. This deletion was intended to avoid any suggestion that the bill's retaliatory authorities are to be used against United States-based production by subsidiaries of foreign firms. Nonetheless, by this action the Committee did not intend to ignore access that is achieved through investments in business entities established in foreign countries in evaluating the openness telecommunications markets—particularly to the extent that such entities enhance United States exports. For example, the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market telecommunications products and services is one of the explicit objectives of the bill (See section 102(a)(2)(B)(vii)). Indeed, the Committee is aware that in most circumstances, telecommunications products and services cannot be marketed without establishing a local business entity. Furthermore, investments of this type often contribute substantially to increased United States exports by creating a market for United States goods and services. The fact that the United States is open to foreign investment—as demonstrated by the success of many foreign telecommunications companies with United States subsidiaries—should provide one of the standards against which to evaluate the openness of foreign markets to the telecommunications products and services of United States firms.

However, where there are barriers to the establishment or operation of foreign entities of United States companies, or there is a requirement that a United States company establish an entity (subsidiary, joint venture or other business arrangement) in order to

gain access or there are investment performance requirements imposed on such entities, these barriers and requirements should be included in the analysis. It follows that sales gained through compliance with legal (as opposed to commercial) requirements of establishment of an entity in the foreign country should not be considered evidence of market openness in that country.

Section 101(c) permits the United States Trade Representative to exclude any country from the requisite investigation after consulting with the Finance and Ways and Means Committees. It is the Committee's intent that countries excluded from investigation under this provision may be included in a subsequent annual review pursuant to section 103(b) in the event that that country's potential telecommunications market is determined to be substantial.

C. PRESIDENTIAL ACTION

Section 102(a) directs the President, based on the four month investigation, to enter into negotiations with foreign countries whose barriers to the importation of telecommunications products and services deny United States firms competitive opportunities which are substantially equivalent to those available to foreign firms in the United States. General objectives for these negotiations include the achievements of multilateral or bilateral agreements that provide for substantially equivalent opportunities, correction of the imbalance in opportunities accruing from deregulation and divestiture in the United States telecommunications market and facilitation of United States exports in this sector to a level commensurate with the competitiveness of the United States industry. To achieve these general objectives, specific objectives are set out to guide the President in his negotiations. They include the negotiation of national treatment, most-favored-nation treatment, nondiscriminatory government procurement policies, the inclusion of telecommunications within the coverage of the government procurement code, equipment standards and procedures for certification which do not exceed the minimum standards and procedures necessary to prevent harm to the telecommunications network, and a variety of other objectives affecting trade in telecommunications products and services.

It is the intent of this legislation that the general SECO standard be translated into a set of specific objectives for each country which are to guide United States negotiators in their efforts to open foreign markets. The achievement through negotiations of the specific objectives identified through this process—both overall and with respect to individual countries—should, therefore, result in achievement of the general objectives in section 102(a)(2)(A), including the assessment of whether substantially equivalent competitive opportunities have been attained through trade agreements. In making this assessment, the President is directed to take into account the factors in 101(b)(1). Where negotiations have failed to achieve the general and related specific objectives, the President is then directed to determine to what extent unilateral actions are necessary to achieve substantially equivalence in competitive opportunities.

The Committee expects the President to factor into the development of specific negotiating objectives the competitive potential of U.S. telecommunications firms. It would be undesirable to offer a foreign country compensation for the removal of telecommunications barriers when the removal of those barriers redound to the benefit of telecommunications firms of third countries.

In the event that the President is unable to obtain an agreement to meet the negotiating objectives with respect to opening a foreign market to telecommunications products and services within eighteen months of the date of enactment, he is directed to section 102(b) to take action to remove the imbalance of competitive opportunities. These actions are to be initially directed at trade in telecommunications products and services, and only in the absence of such trade is the action to be directed at other products and services. The purpose of directing action against foreign telecommunications products and services (where possible) is to exert pressure on the foreign producers which benefit most from access to the United States telecommunications market and from protection against United States exports in their home markets. Actions taken by the President pursuant to section 102(b) are subject to Congressional approval pursuant to the fast-track legislative procedures of sections 102 and 151 of the Trade Act of 1974.

Requiring legislative approval, on a fast-track basis, of Presidential actions under section 102(b), as well as the agreements entered into under section 201 and compensation offered under section 202 of the bill, is based on the Committee's assumption that all of these elements involving several different countries would be combined in one Presidential submission to Congress at the conclusion of the eighteen month period following enactment. This mechanism is designed to ensure that a balanced package of market liberalizing and offsetting actions is achieved in determining the extent to which substantially equivalent competitive opportunities have been obtained and the nature and extent of the United States response to the extent that they have not been.

The Committee agreed to shorten the deadline for action during the negotiating period from two years to eighteen months because of the increased urgency of the problems addressed by this bill. In particular, the Committee noted that the need to address the trade implications of telecommunications deregulation and divestiture has been brought to the attention of the Administration on numerous occasions, beginning with hearings in June 1984. In this regard, members of the Committee expressed their hope that the Administration would use existing authority to begin addressing the problems without waiting for the final enactment of this Act.

Section 102(b)(3) authorizes the President to raise tariffs or otherwise terminate trade agreements, use authority under Section 301(b)(2) or (c) of the Trade Act of 1974 relating to restrictions on FCC registration or approval, prohibit the federal government from purchasing telecommunications products of a specified country, increase domestic preferences or suspend waiver of domestic preferences related to Federal government telecommunications purchases, deny Federal funds or credits for purchases of telecommunications products, suspend GSP benefits and take any other action

pursuant to section 301 of the Trade Act of 1974 against products and services other than telecommunications products and services.

With respect to the authority to terminate or suspend trade agreements for the purpose of increasing tariffs, the President is authorized under section (4)(A) and (B) to "unbind" or suspend existing GATT obligations at the Column 1 TSUS rate prior to the 18 month deadline without actually raising the tariff until later. In products where imports may be increasing rapidly due to deregulation, this would enable the President to moderate the amount of compensation due to principal suppliers of the product should the tariff later be raised.

The President is authorized to choose from among a broad range of offsetting measures under this section to better enable him to tailor his to action to the telecommunications trade situation characterizing each country. The President can use the flexibility provided by the options to impose those restrictions that are likely to have the most profound effect on the specific country involved, to moderate costs of compensation, and to avoid or lessen the negative impact on domestic users of imports from that country. The availability of a range of options, however, does not dispense the requirement that his actions be of sufficient magnitude to fully achieve the objectives in 102(a)(2)(A).

The Committee recognizes that the President will be faced with difficult choices in offering compensation to foreign countries pursuant to the mandate of this bill. American industries can be expected to welcome increased foreign competition in the interest of equalizing market access in telecommunications. But the Committee believes that the importance and potential of the U.S. telecommunications industry justifies the trade-offs made necessary by this legislation.

In order to ensure the sanctity of contracts, actions taken by the President under the authority of 102(b) will not affect binding obligations under any written contract entered into before April 17, 1985 to which a United States national is a party.

D. ACTIONS BY THE UNITED STATES TRADE REPRESENTATIVE

Section 103(a) relates to action required when a country is not in compliance with a trade agreement related to telecommunications which is in existence upon enactment of this act. It directs the United States Trade Representative to take action, within 15 days of the conclusion of its four month investigation, to retaliate against acts, policies, or practices identified pursuant to section 101(a)(2) in order to fully offset them and to restore the balance of concessions with that country. Similar retaliatory actions are required of the United States Trade Representative under section 103(b) at the end of the review completed on each anniversary of the section 101(d) investigation if that review reveals that a foreign country is not complying with the agreement negotiated by the President pursuant to the authority of the bill or has adopted an act, policy or practice described in section 101(a)(2). The specific negotiating objective cited in 102(a)(2)(B)(viii)—related to negotiating objective cited in 102(a)(2)(B)(viii)—related to dispute settlement

and the monitoring of trade agreements—could be used to establish the procedures and terms for such action.

Actions authorized to be taken by the United States Trade Representative under section 103(c) include the termination, withdrawal or suspension of a trade agreement, or portion thereof, the use of authority under Section 301(b)(2) or (c) of the Trade Act relating to restrictions on FCC registration and approval authority and the use of section 301 of the 1974 Act authority against products or services other than telecommunications equipment. However, actions may be taken against products or services which are not related to telecommunications only if all feasible actions have been taken against telecommunications products or services from that country.

Taken as a whole, section 103 represents the mechanism for systematic enforcement of United States rights under trade agreements related to telecommunications. The Committee on Finance believes that the aggressive enforcement of such trade agreements is absolutely necessary if the negotiation of further trade agreements is to have any real benefit for the United States. In this regard, several Members of the Committee expressed concern about the marginal benefits to date to United States firms of telecommunications trade agreements negotiated with Japan related to NTT procurement and sales in the Japanese interconnect market. Since the purpose of negotiating market liberalizing trade agreements is to enhance trade, the reviews required by 103(b) are to be conducted taking into account the results-oriented measures in 101(b).

Since the purpose of this legislation is to use the United States market as leverage to open foreign markets—not close or "reregulate" the United States market—the Committee expects that any action by the President under 102(b) or by the United States Trade Representative under section 103(a) or (b) will be designed to maximize the economic impact on foreign suppliers while minimizing the economic impact on domestic United States interests. In this regard, nothing in these subsections is meant to imply that action should be directed at United States subsidiaries of foreign firms. This will require close consultation with domestic United States interests on both targets and instruments for action by the President or the United States Trade Representative.

The annual review and determination by the United States Trade Representative required by section 103(b) is to be submitted to the relevant Congressional committees. These submissions would be expected to include assessments of action taken or anticipated (both by the President under 102(b) and by the United States Trade Representative under section 103 (a) and (b)), as well as a review of countries initially excluded from investigation pursuant to section 101(c).

Section 103(d) grandfathers binding obligations under written contracts entered into before April 17, 1985 to which any national of the United States has been a party.

E. CONSULTATIONS

Section 104 requires the President and the United States Trade Representative to consult with the Secretary of Commerce, the Federal Communications Commission and the Trade Policy Committee as well as the private sector advisory committees established under section 135 of the Trade Act of 1974 and other interested parties in the course of investigations, in the development of negotiating objectives, and proposed action. Furthermore, the President is required to consult on a regular basis with appropriate Congressional committees on all aspects of the negotiations.

F. NEGOTIATING AUTHORITY

Section 201 authorizes the President to enter into trade agreements to achieve the bill's objectives during a three year period following the date of enactment. Agreements entered into are to be treated, pursuant to section 201(b), as trade agreements subject to fast-track procedures of sections 102 and 151 of the Trade Act of 1974. The President is given the option of making benefits of trade agreements negotiated under this authority to all countries, or just the ones which are parties to the agreement.

The Committee notes that while the President is required to act to achieve his negotiating objectives 18 months after enactment, it would still be possible to negotiate telecommunications trade agreements after that deadline. The action-forcing mandate of 18 months is designed to enhance the leverage of United States negotiators and to improve the prospects for rapid negotiation of market opening agreements.

G. COMPENSATION AUTHORITY

Pursuant to section 202, the President is given authority to compensate a foreign country with respect to which the President has acted to restore the balance of competitive opportunities under section 102(b). Similar compensation authority given to the United States Trade Representative in the event retaliation taken pursuant to section 103(a) is subsequently found to be inconsistent to United States international obligations or in cases where action taken against one country (e.g., a tariff increase against a product for which the country is the principal supplier) also affects a country against which the United States Trade Representative is not acting (e.g., a residual supplier of the same product). Agreements which reflect the compensation authorized by section 202(a) are to be submitted to Congress pursuant to the fast-track procedures of sections 102 and 151 of the Trade Act of 1974.

The Committee anticipates that any compensation owed in response to Presidential action under section 102—particularly if he conducts his negotiations under Article XXVIII of the GATT—should be minimal to the extent that appropriate credit is obtained for unilateral reductions in United States telecommunications trade barriers through deregulation and divestiture.

H. MISCELLANEOUS PROVISION

Among the miscellaneous provisions of the bill is section 301 requiring the collection and dissemination of information related to compliance of imported products with FCC regulations. Section 302 requires the Secretary of Commerce to report to Congress within six months after the date of enactment, and every two years thereafter on the impact of United States' domestic policies and practicies on the growth and international competitiveness of United States telecommunications industry. Finally, section 304 provides that nothing in the act is to be construed to require action by the President or Congress that is inconsistent with the international obligations of the United States international obligations, that is the intent of the sponsors of the bill.

IV. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946 the Committee states that the bill was ordered favorably reported by unanimous vote.

V. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXIV of the Standing Rules of the Senate, the following statement is made relative to the cost and budgetary impact of the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC. November 22, 1985.

Hon. BOB PACKWOOD,
Chairman, Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 942, the Telecommunications Trade Act of 1985, as ordered reported by the Senate Committee on Finance, September 17, 1985.

The bill would require the United States Trade Representative (USTR) to investigate and report to the Congress on foreign barriers to competitive opportunities for U.S. firms in telecommunications markets. Once the report is completed, four months after enactment of the bill, the President would have twenty months to negotiate trade agreements on telecommunications products and services. If no agreements are obtained, the President would be authorized to take a series of retaliatory trade actions. The USTR would also be authorized to take actions to restore the balance of concessions between the United States and a foreign country. To the extent that the President or USTR's response would affect dutiable imports of telecommunications products, it could cause an increase or decrease in customers duties collections. Because it is uncertain what measures would be taken, CBO is unable at this time to estimate the revenue effect of this bill.

The bill also would require the USTR, the Secretary of the Treasury, and the Secretary of Commerce to submit periodic reports to

the Congress. To collect the information for one of these reports, the Customs Service would have to inspect telecommunications products for certain documentation. Products without such documentation would be denied entry. Based on information from the Customs Service and the Federal Communications Commission, we estimate that it would cost about $5 million a year to inspect the products and collect and prepare the information for the Secretary of the Treasury's report to the Congress. We do not expect the other activities required by the bill to result in significant additional costs to the federal government.

Enactment of this bill would not affect the budgets of state or local governments.

If your wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

VI. REGULATORY IMPACT OF BILL

In compliance of paragraph 11(b) of Rule XXIV of the Standing Rules of the Senate, the Committee states that the provisions of the Committee bill should create no new regulatory burdens on the individuals or businesses, will not impact on the personal privacy of individuals, and will result in no new paperwork requirements. The indeterminate nature of the measures authorized to be taken by the President in the event negotiations are unsuccessful make it impossible to assess what if any additional regulatory burdens may be imposed under the bill.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12, of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by the bill as reported are shown below (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRADE ACT OF 1974, AS AMENDED

* * * * * * *

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

* * * * * * *

(e) DEFINITIONS; SPECIAL RULE FOR VESSEL, CONSTRUCTION SUBSIDIES.—For purposes of this section—

(1) COMMERCE.—The term "commerce" includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or nor such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) VESSEL CONSTRUCTION SUBSIDIES.—An act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3) UNREASONABLE.—The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable—

(A) market opportunities;

(b) opportunities for the establishment of an enterprise; or

(C) provision of adequate and effective protection of intellectual property rights.

(4) UNJUSTIFIABLE.—

(A) IN GENERAL.—The term "unjustifiable" means any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States.

(B) CERTAIN ACTIONS INCLUDED.—The term "unjustifiable" includes, but is not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment, the right of establishment, or protection of intellectual property rights.

(5) DEFINITION OF DISCRIMINATORY.—The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) SERVICE SECTOR ACCESS AUTHORIZATION.—The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services, *or a foreign supplier of goods related to a service,* access to the United States market in a service sector concerned.

* * * * * * *

○

NOTICE: In lieu of a star print, errata are printed to indicate corrections to the original report.

Calendar No. 442

99TH CONGRESS, *1st Session* | SENATE | REPORT 99-204

ERRATA

NOVEMBER 26, 1985.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 942]

CORRECTIONS

Page 12: The second sentence of the third full paragraph should read: "American industries can not be expected to welcome increased foreign competition in the interest of equalizing market access in telecommunications."

Page 15: The last sentence of the first paragraph should read: "Finally, section 304 provides that nothing in the act is to be construed to require action by the President or the Congress that is inconsistent with the international obligations of the United States. While the bill does not require Presidential or Congressional action to be consistent with United States international obligations, that is the intent of the sponsors of the bill."

○

71-010 O

S363-8